



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 16, 1991

Mr. Art Cory
Chief Appraiser
Travis Central Appraisal District
P. O. Box 149012
Austin, Texas 78714-9012

OR91-647

Dear Mr. Cory:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12274.

You have received a request for "the employee records of the Travis Central Appraisal District" (the "district"). You have submitted to us as information responsive to the request representative samples of the kinds of information included in the district's employee records. The records submitted include:

- 1) an employment application;
- 2) a performance evaluation;
- 3) a form titled "Personal Data Form";
- 4) a form titled "Employee Data Sheet -- Personnel/Payroll Action";
- 5) a W-4 form;
- 6) a medical history record;
- 7) a form titled "Pension Plan Enrollment Form"; and

8) a form titled "Retirement Plan Beneficiary Designation."

You have also submitted to us for review a form that confers confidential status on a certain employee's home address and telephone number. You claim the requested information is excepted from required public disclosure under sections 3(a)(2) and 3(a)(17)¹ of the Open Records Act. For the purposes of this ruling, we will limit our determinations to the records submitted to us.

Section 3(a)(2) excepts from required public disclosure "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This section protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision No. 441 (1986). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Information previously held by this office not to be protected by common-law privacy interests includes employees' educational training, names and addresses of former employers, dates of employment, kind of work, salary, and reasons for leaving, names, occupations, addresses and phone numbers of character references, job performances or abilities, names of friends or relatives employed by the governmental body, birth dates, height, weight, marital status, and social security number. See Open Records Decision No. 455 (1987). We conclude, then, that the employment application, the performance evaluation, and the form titled "Personal Data Form" may not be withheld from required public disclosure under section 3(a)(2) of the Open Records Act.

¹Section 3(a)(17)(A) excepts from required public disclosure "the home addresses or home telephone numbers of each official or employee or each former official or employee of a governmental body except as otherwise provided by Section 3A of this Act, and of peace officers." Section 3A(a) provides that section 3(a)(17) is applicable only when an employee indicates in writing that he does not want his home address or telephone number disclosed. Thus, you must withhold the address and telephone numbers of employees who have complied with the provisions of section 3A. See also Open Records Decision No. 530 (1989) (a governmental body may not solicit a response from its employees under section 3A(b) in response to a pending open records request). The form you submitted is sufficient indication of compliance with the provisions of section 3A.

Information protected by common-law privacy includes information about illnesses and operations and physical handicaps of applicants and employees. *Id.* Accordingly, the medical history record must be withheld to the extent that it reflects such information. Personal financial information is also protected by common-law privacy. Open Records Decision No. 545 (1990) at 3 held that "[p]ersonal investment decisions appear to be of the kind of financial information that a person of ordinary sensibilities would object to having publicly disclosed." This decision further held that "an individual's investment decisions with respect to a deferred compensation plan, including his choice of investment product and the amounts invested in a product, are not of those kinds of financial transactions that are ordinarily of legitimate public interest." *Id.* at 4. Accordingly, the "Employee Data Sheet -- Personnel/Payroll Action," the "Pension Plan Enrollment Form," and the "Retirement Plan Beneficiary Designation" must be withheld from required public disclosure to the extent that they reflect the personal financial decisions of the employee. Please note, however, that information on the "Employee Data Sheet -- Personnel/Payroll Action" form that reflects salary, leave payment, auto allowance, and other payment information must be released.

The W-4 form is made confidential by statute and is thus excepted from required public disclosure by section 3(a)(1) of the Open Records Act, which excepts "information made confidential by law, either Constitutional, statutory, or by judicial decision." The W-4 form is made confidential by federal law and must be withheld from required public disclosure. 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Attorney General Opinion MW-372 (1981); Open Records Decision No. 523 (1989) at 5.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-647.

Yours very truly,

A handwritten signature in dark ink, appearing to be "Art Cory", is written over the closing "Yours very truly,".

KG/GK/lcd

Ref.: ID#s 12274, 12361, 12376

cc: Mr. Sterling S. Lee
Lloyd Gordon Security Investments
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